



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,375	01/10/2002	John Lawrie	14263	8264

25763 7590 03/24/2003

DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
50 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402-1498

EXAMINER

GARBE, STEPHEN P

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 03/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/044,375

Applicant(s)

LAWRIE ET AL.

Examiner

Stephen Garbe

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. The drawings are objected to under 37 CFR 1.83(a) as failing to illustrate a third panel having a gusseted bottom, as recited in claim 14. No new matter may be added.
2. Figure 7 is objected to as being unclear because it illustrates piercing point 24 as being located in a portion of the bag that is not part of the seam. If there is no seam, there is no connection between the bag panels and, thus, no piercing point.

Clarification is required without the addition of new matter.

3. The written description on page 5 is unclear with respect to the column extension described in lines 16-18. Since the column is defined by a gap in seam 13, it is unclear how the column can extend past the edge of the seam. If applicant's response is to maintain the position that the column extends beyond the piercing point 24, then it should be explained what it is that defines the boundaries of that extension.

Clarification is required without the addition of new matter.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 6-11, 15-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleischer et al., United States Patent No. 3,316,950 (Fleischer). The bag illustrated in Figure 1 includes all claimed features including a column located on the left

side of the pouch and a plurality of piercing points 11. A tube 14 (i.e. a straw) may be provided for dispensing the contents. See column 2, lines 64-66.

6. Claims 1-6, 9-12, 14-16, 18, and 21 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Bell, United States Patent No. 6,485,177. Note Figure 7; col. 8, line 39-col. 9, line 9; and col. 10, lines 39-47. Since the Bell patent and this application are claiming the same invention, an affidavit under 37 CFR 1.131 may not be used to overcome this rejection. See MPEP §§ 715 and 715.05.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleischer et al., United States Patent No. 3,316,950 (Fleischer) in view of Smith et al., United States Patent No. 6,076,968 (Smith). It would have been obvious to provide Fleischer's straw 15 with a point, as taught by Smith at 58, because it would have facilitated piercing the piercing points.

9. Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleischer et al., United States Patent No. 3,316,950 (Fleischer) in view of Kaufman. Kaufman discloses a pouch for use with a straw in which a removable portion 22 covers the straw opening prior to insertion of the straw. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide

Fleischer's straw opening with a removable portion, as taught by Kaufman, because doing so would have prevented contamination of Fleischer's column.


10. The remaining patents are cited to show other pouches having similar features.

11. Any inquiry concerning this application or proceeding should be directed to Stephen Garbe who can be reached at 703-308-1207. The examiner can normally be reached Monday-Thursday between the hours of 7:15 and 4:45 and alternate Fridays between the hours of 7:15 and 3:45.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on 703-308-2572.

13. The fax phone numbers for Technology Center 3700 are 703-872-9302 for papers filed in response to a non-final Office Action and 703-872-9303 for papers filed in response to a Final Office Action.

14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-1148.


Stephen P. Garbe
Primary Examiner
Group 3720